

**REMARKS**

Claims 1-39 are pending in this application. The Office Action subjects claims 1-39 to an Election of Species Requirement. By this Preliminary Amendment, claim 1 is amended. No new matter is added.

**I. Preliminary Amendment**

Claim 1 is amended to remove the phrase "for an effective dose of active ingredient(s) of 0.5 mg/m<sup>3</sup> to 40 mg/m<sup>3</sup>." Applicant respectfully notes that this amendment is not made in response to any rejection or objection.

**II. Election of Species**

Claims 1-39 are subject to an Election of Species Requirement for allegedly failing to possess unity of invention under PCT Rule 13.1. Applicants provisionally elect as a Species the following: a smoke composition wherein the smoke base comprises ammonium nitrate (oxidizing agent), sorbitol (reducing agent), silica (aerating agent), and clay (catalyst/regulating agent) with traverse. At least claims 1-5, 9-11, 16-18, 25-27, 33 and 38-39 read on the elected species. At least claims 1-4, 26 and 38-39 are generic to all species.

A lack of unity of invention may only be established *a posteriori* by showing that the common subject matter does not define a contribution over the prior art. See MPEP §1850(II), quoting *International Search and Preliminary Examination Guidelines* ("ISPE") 10.03. Applicant respectfully traverses the Office Action's assertion that Tsukii et al. (EP 0639331 A2) teaches all the features of claim 1. Specifically, Tsukii at least fails to teach that the ratio by weight of the oxidizing agent to the reducing agent is at least 3:1. Tsukii does not teach any example in which this ratio is present. In Example 1 of Tsukii, for example, the reducing agent (kaolin clay) is present in 25 parts, while the reducing agents (potassium perchlorate, potassium chlorate and potassium chloride) are present in a total of only 23 parts. Therefore, a person having ordinary skill in the art could not have picked individual components in specific amounts so as to arrive at the presently claimed 3:1 ratio of oxidizing

agent to reducing agent, because Tsukii does not teach using this exact ratio. Furthermore, the presently claimed ratio shows unexpected results in that fewer residues are present while delivering a high dose of an active ingredient (present specification page 8, lines 21-38).

Therefore, the Office Action fails to establish that the presently claimed species lack *a posteriori* unity of invention. Accordingly, the Election of Species Requirement is improper and must be withdrawn.

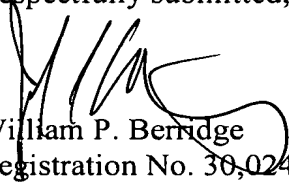
Reconsideration and withdrawal of the Election of Species Requirement is respectfully requested.

**III. Conclusion**

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,

  
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WPB:STD/axl

Attachment:  
Petition for Extension of Time

Date: February 7, 2008

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